

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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THE UNITED STATES DISTRICT COURT DISTRICT OF HAWAII

U.S.A.	Case No CR-05-00248 J.M.S.
Plaintiff	MANDATORY JUDICIAL NOTICE OF MITIGATING
U.S.	FACTORS AND PRE SENTENCE STATEMENTS and
	ROBERT SIGOUIN AFFidavit in support.

Defendant	By Robert Sigouin
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MANDATORY JUDICIAL NOTICE OF MITIGATING FACTORS AND
PRE SENTENCE STATEMENTS and AFFidavit in support in
Case No. CR-05-00248 JMS.

Comes now Robert Sigouin a lawful man on
the land. I am addressing these matters in the
MANDATORY JUDICIAL NOTICE OF MITIGATING FACTORS
AND PRE SENTENCE STATEMENTS in Case/Account NO -
CR-05-00248 because:

1. The very special and complicated circumstances involved in this Case.
2. To enlighten the Court on several matters.

a

The advisory guideline sentence is too harsh or is "greater than necessary"

Montanye v. U.S. 77 F.3d 226, 233 (8th Cir. 1996)

(Bright J. dissenting ("By any ordinary measure outside the guidelines, I would think this sentence would be draconian, unnecessarily harsh and unreasonable."))

U.S. v Pacheco-Solo 386 F.Supp.2d 1198, 204 (D.N.M. 2005)

("Because the Guidelines are no longer mandatory, a non-Guideline sentence need not be supported by factors that would have justified a departure under the old, mandatory regime, and a traditional "departure" is no longer necessary in order for the sentencing Court to impose a sentence below the Guidelines range"); *Id.* (Under the guidelines courts traditionally were ~~forbidden~~ forbidden to consider the defendant's age... his educational and vocational skills... his mental and emotional condition... his physical condition including drug or alcohol dependence... and his family ties and responsibilities... in wake of Booker, these factors are important to consider when fashioning a sentence.)

Consider also that Congress has directed that the Court "shall impose a sentence sufficient, but not greater than necessary, to comply with [the purposes of sentencing]" (emphasis added)

18 U.S.C. § 3553(a) (emphasis added).

U.S. v. Pirani 406 F.3d 543, 564 (8th Cir. 2005) (Bye J. dissenting) No special weight is to be given to the advisory guidelines or other factors mentioned in next

B

the statute. See U.S. v. McBride (6th Cir. 1/17/2006) ("while the Guidelines remain important, they are just one of the numerous factors that a Court must consider when sentencing a defendant.")

Remember that even before Booker the Supreme Court said in Koon vs. U.S. 518 U.S. 81, 113 (1996) that "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual in every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue" Thus the Guidelines before Booker "place[d] essentially no limit on the number of potential factors that may warrant a departure".

U.S. v Cook 938 F2d 149, 152 (9th Cir 1991) The Guidelines "do not require a judge to leave compassion and common sense at the door of the courtroom"

The advisory guideline is too harsh and the too harsh a sentence does not promote respect for the law but rather the opposite; regardless of traditional departures, all mitigating factors, including the effect on innocent children and family members; a sentence must be just, and mercy and compassion are part of justice. Fashioning a just sentence cannot be reduced to a mere arithmetical exercise (and that) reliance solely on numbers, quantities, offense levels, and matrices produces an illusory precision that obscures the fact that sentencing, in the end, must ~~also~~ involve the exercise of "judgement".

next

C.

The possibility of rehabilitation has returned as a forceful mitigating factor because of, it is a goal of punishment 18 U.S.C. § 3553(a)(2)(B). That goal cannot be served if a defendant can look forward to nothing beyond imprisonment. Hope is the necessary condition of mankind, for we are all created in the image of GOD. A Judge should be hesitant before sentencing so severely that he destroys all hope and takes away all possibility of useful life.

Vindictive prosecution and entrapment.

When I told KAWANA I did not know the ~~cross~~ woman he asked me why I got into an elevator with her so I told him that one time when I went to meet my connection JOHN at STARBUCKS ON KUHIO approx. 4 or 5 month's before my arrest he was sitting at a table with 4 Mexican women who all smiled and said hello then we (JOHN & I left) I told him I think she was one of them and that come to think of it that they were probably meeting the old man HEROINE ADDICT BOB, ROBERTO, who they would MARK if they ever got caught to protect the business and keep it going. I discussed this matter several times with KAWANA while he took notes.

When KAWANA asked me about the money I told him that the large sum (which I told JUDGE SEA BRIGHT I would forfeit along with my guilty plea to under 400 grams of Heroin) took me 6 years to save and it was for my Daughter's education contrary to what the prosecutor says this money was, and is not money derived from drug transactions and was not for drugs it was found at my residence (not on my person and I never said it is or ever was drug money but if the prosecutor wants to steal it so bad then so be it. This is when I told him that RICHIE MUDD at R.S.I. could vouch for the fact that I do roofing.

I told him ~~to~~ that RICHIE has the largest roofing supply in the Islands and I have been picking up and buying roofing products from him for many years. This is when KAWANA said to me lets subpoena him to which I replied once you request a subpoena won't the prosecutor know ~~that~~ what were up to which started me wondering. We discussed this matter of RICHIE MUD several times to which I told KAWANA that I'm sure if RICHIE get a weeks notice he would testify without needing a subpoena.

We were getting close to my tentative trial date so this is when I told him about my ACE IN THE HOLE which I planned on using during trial. I told KAWANA that when this ROSA woman was on the witness stand I would ask her that since she supposedly brought me drugs previously what could she describe about me besides what she was looking at. Since she did not sell me any drugs she would not know that up until a few weeks before my arrest and for several months because of complications I had a bright green ~~to~~ and bright blue cast on my right arm from my hand to my shoulder and since she could not mention such an obvious thing she would be proven a liar. To which MR KAWANA replied lets subpoena the records from KAISER HOSPITAL ~~This is when I replied what did I tell you about subpoena the prosecutor would know so I really started to doubt his integrity & trust.~~

After the trial postponement KAWANA came to me and told me I should plea guilty there was no way I could win. I was very surprised at his change of attitude (this was late October early November) I told him how about my "ACE IN THE HOLE" the cast on my arm to which he replied it's not enough.

So you see now that after several more inducements getting rid of KAWANA. By the way when termination of Counsel of KAWANA I remember he left the Court Room quickly while the prosecutor said "I don't agree with the colluding" to which KAWANA left & the Judge ended it this I'm sure you can verify by transcript. Therefore by not arguing colluding this is ~~was~~ an admission of guilt. Approximately 3 weeks before my trial while in the Court Room the prosecutor slaps down about 70 pages of discovery. In this discovery was the fact that a PEREZ MEDINA woman picked me out of a photo lineup and said she had sold me drugs at STARBUCKS ON KUHIO, also in the same discovery was that agents went to see RICHIE MUDD and on the same day, is all it said they went to CERTIFIED CONST. Well.

Starbucks & Richie Mudd are two things I had only discussed with MR. KAWANA several month before as I have explained. I did not only discuss ~~the~~ these matters once but several times which made me very suspicious of breach of the Attorney Client privilege. The prosecutor must have read my mind and realized he might have made a

big mistake by putting this on discovery so a few days later I receive by mail about over 200 pages of discovery and in this discovery which CHOI my standby counsel also brought me the same day after the one by MAIL the story about RICHIE MUD had been re-written to include times and lies about who was visited first and especially the amount of years since I had seen KEVIN SIMPKINS this time ~~sing~~ signed by FBI Agent MURAOKA. This is whom I knew that KAWANA before he told me I had no chance of winning in early NOV. had told the prosecutor the information I told him in confidence because of the date RICHIE MUD was visited was also early NOV. so I prepared the motion that was addressed during Jury selection.

When I put KAWANA on the witness stand and he answered all my questions with lies because I know what we had discussed several times including my ACE IN THE HOLE the cast on my arm. You can also verify that his answers were all lies with the transcripts. Then agent MURAOKA lied & said she received her information from my Wife that's also false. Then MR SIMPKINS came to testify and the only answer he answered positively is to the one I was sure of "When was the last time you saw me" to which he answered the truth approx 14 years.

This is why, that saving my Wife & I discussed and I figured since the prosecutor knew about the cast on my arm, so would these women at my trial.

No doubt about it. You see when KAWANA answered all my questions with lies I was crushed, beat, disappointed, this was treachery. When I tried to have the co-conspirator statement of ~~RITA~~ PEREZ MEDINA crushed the prosecutor gave you the weakest excuse I could imagine "Well she is RUBY'S mother and this was a very hard thing for her to do." Please tell me why. I don't know RUBY let alone her mother. I WAS SET UP and I knew it.

CHOI had been hounding me and my wife to have me plea guilty he told us both he could get me 41 months so I figured with my ace in the hole out I was sure that the women would both say I had a big green + blue coat. There was no doubt in my mind - I figured that NICO my brother in law would be in prison for a while so my family was safe my daughter would probably be just reaching 14 years of age when I got out then maybe I should plea guilty which is what I did to Judge Seabright with no plea agreement besides the verbal one I believed I had to an amount not to exceed 300 grams which I believe is the agreement we made in the courtroom.

Anyhow a month later CHOI comes to me and says the prosecutor is enhancing your charge. I'm a father of 4 I told the probation officer to look at the transcript + make her report which is level 26 even this is a lot of time for a 58 year old man with no history of violence or drug record; especially one who got cheated by ATTORNEYS, F.B.I, PROSECUTION.

1. Extraordinary Family Situations causing extreme stress 24 hrs a day where Incarceration could cause extreme harm or even death on innocent family members.

It completely amazes me that the F.B.I. and the prosecutor don't even care about this the most dangerous of situations. Please you must read the Motion of Fabricating Evidence by F.B.I. and Withholding Evidence filed on:

Everything in this Motion is true. You see my Wife + Daughter cannot afford to live anywhere else especially now with my incarceration so they have to live with her mother and because it is her mother's house my wife's sister Malia Darrell also lives there. Since my guilty plea somehow PHIL NICO my sister in law's long time boy friend has been released from F.D.C. Honolulu and moved into the same house as my wife, daughter and mother in law and because it is not her house my Wife has no choice about this. This person NICO & MALIA were arrested with 2000 grams of heroine and must have been so helpful to the Government that she did no time & he was released within a year. After his release from F.D.C. he found out that several of the people in California he ratted on had to pick up their families and move back to Mexico so they put a price on his head and so did some of the people he had arrested here in Honolulu. This fact is verified by the fact that he decided the only safe place for him was in F.D.C. Honolulu.

I don't know if he asked the F.B.I. for protection but if he did they must have refused him so he and MALIA decided he would rob their own Bank in Star Market Kahala where he was well known get enough money to buy some Crack their drug of choice then he would turn himself in which is what happened. You see he was so scared for his life that he would go to this extreme Well I'm not sure what sentence he received for the robbery but I know that somehow within a week or two after my guilty plea NICO was released from F.D.C. Hilo and is now living in the same house as My 11 year old daughter my wife my mother in law + MALIA my sister in law (his girlfriend). I told the F.B.I. about this they acted like they knew nothing about what I was talking about which is impossible, between the two of them MALIA + PHIL they are responsible for many, many, arrests only one agent said, "Well your best bet is to get out of here to CANADA and get your family out of there" this was before NICO was released for the Bank robbery. Well fat chance of that anyhow.

Everyday I make ~~as~~ many 1 minute calls to my wife or daughter just to make sure they are all right and still alive because the word here at F.D.C. is that as soon as they whoever they are find out NICO is out and figure out where he is he is a DEAD MAN. The house where they live is on a dead end street the yard is surrounded by walls so the

neighbors can't see so the best place to get to
NICO is there. There where my 11 year old daughter my
wife and my mother in law live! Believe me in
this day and age they could all be murdered. Just
the fact that there is even a chance of this and the
AGENTS don't care is shocking. Do you know
that within 2 hours of my arrest one of the F.B.I.
agent told me "No matter what your a Canadian
so we will have you deported and we will ruin
your family" Well now there's a chance that
they will KILL MY FAMILY.

I'm telling the truth here folks and I
beg of you to please do something. I know that
being a prosecutor or a Judge you can verify
this so please don't put this matter aside it's
real serious stuff and now, you know! I swear
to God this is as real as it gets and it scares
~~me~~ me every minute of every day. How this
can even be allowed to happen in the U.S.A. I must
say is way beyond my comprehension and shameful.
This is not a book or a movie this is REAL.

Ineffective assistance of Counsel,

1 - I told both Counsel KAWANA & CHOI that the main reason I would not plea guilty is that I did not want a drug record following me wherever I went.

Well if either one of these attorneys so knowledgeable in the law would have just told me what I read a few weeks ago that once deported to Canada that I would have no drug record in Canada I would have thought differently.

2 - If KAWANA would have told me when the prosecution offered me a 5 year plea agreement that I might be able to get some downward departure from that, I would have thought differently.

If KAWANA would have told me that the prosecutor knew about Starbucks, Richie Mudd and the cast on my arm I would definitely have acted & thought differently.

The Attorney client privilege was breached and PERJURY was committed by RICHARD S. KAWANA ESQ.

2. Alien faces More Severe restrictions in prison than Non-Alien.

Defendant is deportable Alien who "faces a unwarranted increase in severity of sentence I am unlikely to be eligible for any early release, I will not qualify for minimum security prison and do not qualify for reduced credits for participation in a residential drug program or a prison program that allows reduction of sentence or a halfway house at end of sentence."

U.S. v Harry Cubillos 91 F3d 1342, 1344 (9th Cir 1996)
same U.S. v. Farouil 124 F3d 838 (7th Cir.)

There is a 1 year sentence reduction awarded to those who complete the BOP's 500 hour drug program to which I am not eligible.

3. Alien who will be deported.

I will be deported and banished from the place where my 3 sons, wife and 11 year old daughter live and where I've lived for over 30 years myself.

In light of Koon and Booker this is obviously a mitigating factor see Jordan v De George, 341 U.S. 223, 232 (1951) deportation is, "a life sentence of banishment in addition to the punishment which a citizen would suffer from the identical acts."

Disparity in sentencing

C - Defendant Rosas Guerrero received a 42 month sentence . Even though she co-operated with the F.B.I. if everything is considered I was only a small cog and ~~cooperated~~ Rosas Guerrero and her other spanish friends used me to protect the main distributor "John". This is obvious, "all spanish speaking people who probably never used heroine" but were making plenty of money for who knows how long. I on the other hand was arrested with no drugs or money, sure I was a heroine addict who needed the drug just to function and go to work. There is no proof that I sold heroine to anyone . Contrary to what the prosecutor says the money found at my residence had nothing to do with drugs. I'm 58 years old and that was every dollar I had saved for at least 6 years . Yes I did agree to forfeit it with my plea but I never said it was drug money and never would it's every penny I had . See U.S. v Tzoc-Sierra 387 F3d 978 (9th Cir. 2004) and U.S. v Caperna 251 F3d 827 (9th Cir. 2001)

In conclusion any sentence higher than Guerrero who was actually caught with heroine and who knew other people who have obviously been bringing heroine to Hawaii for a while and probably still are would be unfair and unjust.

The advisory guideline, when calculated by a preponderance standard, is too high when compared to guideline calculated by standard of beyond a reasonable doubt.

Sixth Amendment requires drug quantity to be proved beyond a reasonable doubt standard. Here evidence is insufficient to establish, beyond reasonable doubt because all evidence above minimal amount is all based on Hearsay. I never went to trial so whatever may have been said about me at trial is nothing but hearsay and the preponderance is just too high because there was no opportunity to defend myself.

I attempted to co-operate with the Government but because they regard me as a flight risk (which is preposterous considering that I have a wife and daughter who is only 11 years old) or maybe they were not interested in the truth because I said I could help to get John the young man who supplied me and possibly Ruby who is the person they seem to put on top of this group.

I have a plea agreement written by the Government from Nov 29th which puts me at level 26 and a tentative one written by Richard Kawara which puts me at level 21-19. I've been incarcerated since May so I have not committed any other crimes.

since my arrest obviously so everything beyond these levels is purely vindictive because I insist on my rights as a human being. Contrary to what the prosecutor writes there is no new evidence beyond what is on these documents.

The probation office read the transcript of my plea with Judge Seabright and assessed my level at 26. And Rosas Guerrero received 42 months. Therefore any higher level is preposterous.

The defendant is older and presents low risk of rekidivism.

I am 58 years old already will be deported and will never do drugs again. I've worked real hard all my life in the construction industry doing honest work.

In Conclusion.

My offence level should be lowered to 17 and I will explain why. With no disrespect for the law to the contrary I have gained a great respect, much more than most and I am terribly sorry and remorseful. Drug addiction at the point I was is a powerful sickness and this is probably, "no" surely the only way I could have beat it.

As you know I already have the skills in the roofing and sheet metal business but at 58 years of age and being banished from all my work ties and connections and the Country where all my children and wife are will be a difficult task for me to establish myself prove my skills and generate employment so I can send for my wife and daughter and remove them from the very dangerous situation, not only is it dangerous it's also very difficult and complicated. I will be penniless with only very few good years left, this task is a challenge I believe I can meet now but considering my age & health it must be soon.

In this very special situation you must try and show compassion in a fair sentence to promote respect for and faith that system can be fair, to destroy this family, considering the damage would be cruel and unusual punishment and belongs in medieval times not 2006 A.D. and against the Constitution of the United States.

I beg you please have mercy.

Respectfully

Robert Lynn